IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.8.2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.15699 of 2007

Mrs.Mary Magdaline Roy .. Petitioner

vs.

1. The Special Commissioner &
   Commissioner of Land Reforms,
   Chepauk, Chennai - 600 005.

2. The Competent Authority,
   Urban Land Ceiling and
   Assistant Commissioner, Urban Land Tax
   (Alandur Zone),
   153, Karneegar Street,
   Adambakkam, Chennai - 88.

3. The Tahsildhar,
   Tambaram, Chennai .. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondents, especially, the order of the second respondent, dated 14.12.1989, in ref. SR.1199/87A, in respect of land in Survey No.34/2, measuring an extent of 6500 sq.mts. of Neelangarai Village, Tambaram Taluk, and quash the same including any consequent proceedings, and further to direct the respondents to treat all proceedings relating to land referred to above as abated, under Section 4 of The Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act, 20/99, so as to enable the third respondent to incorporate the name of the petitioner as owner in all revenue records.

For petitioner : Mr.V.Ramesh
For respondents : Mr.A.Arumugam
Additional Government Pleader

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O R D E R

With the consent of the learned counsels appearing on either side, the writ petition is taken up for final disposal.

2. Heard Mr.V.Ramesh, the learned counsel appearing for the petitioner as well as Mr.A.Arumugam, the learned Additional Government Pleader, for the respondents.

3. The brief facts of the case, as stated by the petitioner, are as follows:

The petitioner is the owner of the land comprised in Survey No.34/2, measuring 1 acre and 60 cents in Neelangarai Village. She had purchased the said land from one Velu by means of two sale deeds, dated 9.7.1962, bearing document No.1774/62 and 14.11.1962, bearing document No.2981/1962, respectively. The said sale deeds had been duly registered at the Sub-Registrar's Office at Neelangarai. After the said purchase, the petitioner's name was duly incorporated in the revenue records and a patta bearing No.159 was issued in favour of the petitioner, with regard to the land in Survey No.34/2, by the proceedings of the Tahsildar, dated 20.4.1968. The Patta Pass Book had also been issued incorporating the name of the petitioner as the owner in respect of the land in Survey Nos.34/2 and 34/9.

4. The land in Survey Nos.34/1 and 34/2 had also been assessed to Urban Land Tax by the second respondent and when a demand had been raised, a sum of Rs.29,504/- was paid by the petitioner, on 13.11.1998. Thus, the petitioner's right, title, possession and enjoyment of the land in question has been proved beyond doubt. However, when the land was inspected by certain Government Officials they had informed the petitioner that the said land has been acquired by the second respondent, under The Tamil Nadu Urban Land (Ceiling & Regulation) Act, 24/78. While the petitioner had approached the office of the second respondent with a request to get a certified copy of the order passed under Section 9(5) and the other provisions of The Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, (hereinafter referred to as the Act), the second respondent had furnished an order, dated 14.12.1989, issued under Section 9(5) of the Act in the name of Velu showing acquisition of the land in question to an extent of about 6500 sq.mts in Survey No.34/2 of Neelangarai Village. The petitioner had also been informed by the Officials concerned that there were other proceedings under Sections 10(1), 11(1), 11(3) and 11(5) of the Act, pursuant to the order passed under Section 9(5) of the Act. In such circumstances, the petitioner had preferred the present writ petition challenging the proceedings issued under Section 9(5) of the Act and the consequent proceedings issued thereon.

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5. It has been further stated by the petitioner that all the proceedings initiated by the respondents, under the provisions of the Act, had been done only against Velu, who had sold the land in question to the petitioner by registered sale deeds, dated 9.7.1962 and 14.11.1962. Even though the petitioner's name had been entered in all the relevant revenue records, it is difficult to comprehend the reasons for the action of the respondents in proceeding against Velu, who is the vendor from whom the petitioner had purchased the land in question.

6. The petitioner has further stated that, from the order of the second respondent, it is seen that the mandatory provisions of the Act have been given a go by by the second respondent, while acquiring the land in question. The second respondent had issued a notice, under Section 7(2) of the Act, calling upon the land owner to file a statement regarding the holding of the land and the said notice has been admittedly served by affixture. The draft statement, under Section 9(1) of the Act, together with a notice, under Section 9(4) of the Act, dated 15.9.1989, had also been served by affixture, on 30.9.1989. Affixture is not a mode of service contemplated under the relevant rules.

7. It has been further stated by the petitioner that Rule 8 of The Tamil Nadu Urban Land (Ceiling & Regulation) Rules, 1978, (hereinafter referred to as the Rules) mandates that a notice, under Section 9(4) of the Act, together with a draft statement, under Section 9(1) of the Act, shall be served by 'Registered Post Acknowledgment Due' on the last known address of the land owner. Any other method of service is contrary to the provisions of the Act and the Rules framed thereunder. Therefore, the proceedings initiated by the respondents are vitiated and the order passed, under Section 9(5) of the Act, is non-est in the eyes of law and liable to be set aside.

8. It has been further stated by the petitioner that since the notices, as contemplated under the law, have not been served in a proper manner, in accordance with provisions of the Act, the subsequent proceedings acquiring the land, declaring the excess vacant land under Section 11(1) of the Act, the vesting under Section 11(3) of the Act and notice calling upon the land owner to surrender possession under Section 11(5) of the Act, are also non-est in the eye of law.

9. It has been further stated that the findings of the second respondent that the land in Survey No.34/2 lies on the North of a Street and that the entire extent of land is vacant cannot be the basis of acquiring the land. Agricultural lands are excluded under Section 3(p) of the Act as they are not vacant lands. The land continued to be an agricultural land long after its purchase and even after the coming into force of the Act. Therefore, the acquisition of

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an agricultural land cannot be valid.

10. The petitioner has also stated that the second respondent had assessed the land to tax by proceedings under The Tamil Nadu Urban Land Tax, 1966, and a demand had been made by the third respondent and an amount of Rs.29,504/- had been paid by the petitioner as Urban Land Tax from *fasali* 1401. It is clear that the land was not assessed to tax prior to *fasali* 1401 as it was an agricultural land. Thus, the assessment by the second respondent for the payment of the tax proves that the petitioner is the owner of the land and that she is in possession and enjoyment of the same.

11. It has also been stated that the second respondent had allowed only 500 sq. mts. towards family entitlement for the family of Velu, in whose name the proceedings had been initiated. Therefore, the entitlement has not been assessed taking into consideration the family of the petitioner. Even though the petitioner is in possession and enjoyment of the land, there has been no notice calling upon her to surrender possession of the land, under Section 11(5) of the Act. The entire property lies within the compound wall of the petitioner which had been erected even before the Act was repealed with effect from 16.6.1999. No proceedings had been initiated by the second respondent, under Section 11(6) of the Act, to dispossess the petitioner, either forcibly or otherwise. The petitioner has not surrendered possession of the land and the petitioner has not been dispossessed from the land. Therefore, any claim by the second respondent that the possession of the land in question had been taken cannot be accepted, since actual physical possession of the land is still with the petitioner. Therefore, the proceedings initiated by the second respondent, under the Act 24/78, shall abate in view of Section 4 of Act 20/99, as the petitioner is in continuous possession and enjoyment of the land till date.

12. In the counter-affidavit filed by the respondents, it has been stated that the second respondent had issued a draft statement, under Section 10(1) of the Act, on 31.3.1990, which was also served by affixture. While preparing the sub-division records, the extent of land in S.No.34/2 was found to be 5950 sq.mts., instead of 6000 sq.mts. The correction was made in the records in SR.1199/87, dated 30.3.1991, issued by the second respondent.

13. It has been further stated that the action had been initiated by the second respondent under Sections 11(1) and 11(3) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, to publish the notification, under Sections 11(1) and 11(3) of the Act stating that the excess vacant land measuring an extent of 5950 sq.mts. at Neelangarai Village is being acquired from Velu. The notifications, under Sections 11(1) and 11(3) of the Act, were published in Tamil Nadu Government Gazette Nos.24 and 37, dated 26.6.1991 and 25.9.1991

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and the notice under Section 11(5) of the Act was issued to the urban land owner, on 24.10.1991, and the possession of excess vacant was taken over by the Revenue Inspector of Pallikaranai Village, Saidapet Taluk, on 27.1.1992. Since the urban land owner's address was not known, the payment of the compensation amount, payable under Section 12(6) of the Act has been withheld by the second respondent.

14. It has been further stated that though the petitioner has claimed that she is the owner of the land S.No.34/2 at Neelangarai Village, measuring an extent of 1.60 acres by virtue of the purchase made by her from Velu by way of two sale deeds, dated 9.7.1962 and 14.11.1962, she had not filed the relevant records before the respondents to prove her claims. Based on the records available, the second respondent had found that the land stood registered in the name of Velu and therefore, the necessary action had been initiated in the name of Velu, as per the provisions of the Act.

15. It has been further stated that even though further action had been taken, with regard to the land in question, including the taking of possession of the land, by the Revenue Department, on 27.1.1992, the petitioner had not challenged the same. The petitioner had not informed the second respondent about the purchase effected by her in the year 1962. The *adangal* extract of *fasli* 1391 shows that the land in question stood registered in the name of Velu. Since the correct address and the whereabouts of the urban land owner was not known, all the notices and orders passed by the second respondent were served by affixture, as per the due procedure established by law. Therefore, the proceedings of the second respondent are valid and in accordance with law.

16. It has been contended by the learned counsel appearing on behalf of the petitioner that the proceedings were initiated by the respondents, under The Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, only against one Velu, the vendor of the petitioner, who had sold the properties in question to the petitioner by a sale deed, dated 9.7.1962, and therefore, they are invalid in the eye of law. It has also been contended that the respondents had attempted to serve the notice only by affixture, as admitted in the counter-affidavit filed on behalf of the respondents. Even though it is stated in the said counter-affidavit that the notice, under Section 11(5) of the Act, was issued to the urban land owner, on 24.10.1991, and the possession of the excess vacant land was taken over by the Revenue Inspector of Pallikaranai Village, Saidapet Taluk, on 27.1.1992, nothing has been shown on behalf of the respondents that actual possession of the land in question had been taken. Further, no compensation has been paid to the petitioner as provided under law. In such circumstances, the impugned proceedings of the respondents cannot be held to be valid in the eye of law.

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17. Mr.V.Ramesh, the learned counsel appearing for the petitioner, has relied on the various decisions of this Court in support of his contentions. They are as follows:

17.1. In *JAYASEELAN AND ANOTHER Vs. THE GOVERNMENT OF TAMIL NADU AND OTHERS (2006-3-L.W.440)*, this Court has held that following the earlier decisions of this Court it can be reasonably concluded that the proceedings initiated under the Tamil Nadu Urban Land Ceiling Act, 1978, were not proceeded against the petitioners who were shown to be in actual possession of the lands in question, and the repeal Act 20 of 1999, on coming into force, the acquisition proceedings stand abated in accordance with Section 4 of Act, Act 20 of 1999.

17.2. This Court by an unreported decision in *W.P.No.29081 of 2003, dated 19.10.2006*, has held as follows:

> "9. These records can never be believed as neither the petitioner nor the predecessor-in-title have been served with proper notices in terms of the Act and the Rules made thereunder. When valuable lands are sought to be taken over by a statutory enactment, it is incumbent on the part of the authorities to scrupulously follow the rules prescribed thereunder. The mode of affixture cannot be resorted to as a matter of course and attempt should have been made to send the notice by Registered Post as contemplated under the Rules. If this process is resorted to by the respondents, any land can be taken over without even notice to the land owners by not complying with the mandatory provisions of the Rules. There are also no records to show that physical possession has been taken over from the petitioner, who is the purchaser of the land even as early from 29.8.1986. In any event, there are no records to indicate that physical possession has been taken over from the petitioner and in the absence of the same, the petitioner is entitled to have the benefit of Section 4 of the Repeal Act 20 of 1999.
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> 10. This Court in its judgment reported in (2006) 2 M.L.J. 664 (SOSAMMA THAMPY Vs. THE ASSISTANT COMMISSIONER (ULT) - CUM - COMPETENT AUTHORITY (ULC), has analysed all the previous case laws and categorically held that physical possession is required and mandatory under the ULC

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Act and noting in the file that symbolic possession is taken cannot be accepted as taking of physical possession. This Court is in complete agreement with the ratio laid down in the aforesaid decision which also squarely applies to the facts and circumstances of the case."

17.3. In *ALAGU Vs. DISTRICT COLLECTOR, ((2007) 2 MLJ 1168)*, this Court has held as follows:

"10. In W.P.No.4920 of 1999, one other factor, which has to be borne in mind is that the person on whom the Notice in Form No.I was issued was not alive and therefore, there was no question of service. Since the person on whose name, the notice was issued was not alive, there is no question of refusal of notice. The statement of the Department that notice was refused, only affirms the view of the Government with regard to the attitude of the Officers in the matter of service of notice. In this background, the affixture of the notice on a placard which is said to have been embedded to the land, cannot be said to be a proper service of notice. In view of the above, it is clear that there is no service of notice in Form No.I in terms of Rule 3(1) of the Rules and there is a clear violation of Section 4(2) of the Act. For the said violation, the Notification under challenge deserves to be set aside.

12. The violation of the statutory provision is a good ground to interfere with the acquisition proceedings and accordingly, the Notification issued under Section 4(1) of the Land Acquisition Act in so far as the petitioners' land are concerned, is set aside. The respondents are at liberty to proceed with the matters afresh, if so advised. All the three writ petitions are ordered accordingly. No costs."

17.4. In *RAMIAH MOOPANAR Vs. STATE OF TAMIL NADU (2000 T.L.N.J.8)*, this Court has held that "it is clear that as per sub-section (2) of Section 45 of the Act, all notices shall be served on the person concerned. When such person cannot be found, it is open to the authorities to effect service on any adult male member of his family residing with him and if such adult male member is not found, the notice may be served by fixing a copy of the outer door of the house in which the person ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the Land Acquisition Officer or of the Collector or in the Court

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house. In addition to the above mode of service, the Officer is expected to affix a copy in some conspicuous part of the land to be acquired. There is no explanation either in the counter affidavit or in the records regarding compliance of such course as mentioned in sub-section (3) of Section 45 of the Act. After holding that the land owner/petitioner herein was not in the village, no effort has been taken by the Officer to serve a copy on the adult male member or affixed a copy on the outer door of the house in which the petitioner resides in the village. Affixing a copy in some conspicuous part of the land to be acquired is in addition to the affixture in the dwelling house or serving on the adult male member. Even otherwise, as per proviso to sub-section (3) of Section 45, the Officer could have sent the notice by post in a letter addressed to the petitioner at his last known residence, address or place of business and registered under Sections 28 and 29 of the Indian Post Office Act, 1898. Such recourse has not been followed by the respondents. In such a circumstances, I accept the first contention raised by the learned counsel for the petitioner and I hold that there was no proper service of notice in Form 3-A on the petitioner. Accordingly, he had lost the opportunity of filing his valid objections during enquiry under Section 5-A. As already discussed though it is stated by the first respondent in para 3 of the counter affidavit that they received objections from the land owners, no details have been furnished, hence the statement is not helpful to their own defence."

18. Per contra, the learned counsel appearing on behalf of the respondents, had submitted that from the records of the second respondent it was seen that an extent of 1.60 acres in S.No.34/2 in Neelankarai Village is in the possession of one Velu. Since the urban land owner had not filed any return, under Section 7(1) of the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, a notice under Section 7(2) of the Act had been issued by the second respondent, (the Competent Authority/Assistant Commissioner (ULT) Alandur) in SR 1199/87, dated 20.3.1989.

19. It has been further submitted that since the urban land owner's correct address was not known, the notices contemplated under the provisions of the Tamil Nadu urban Land (Ceiling & Regulation) Act, 1978, had been served by affixture. Since there were no objections received from the urban land owner, further action was initiated under the provisions of the Act and the second respondent had concluded that out of the total land of 6,500 sq. mts., 6000 sq. mts. had been determined as excess vacant land. allowing 500 sq. mts. towards entitlement. Section 9(1) notice, along with the draft statement, under Section 9(4) of the Act had been issued, on 15.9.1989, and they were was also served by affixture, on 30.9.1989. Thereafter, orders were passed, under Section 9(5) of the Act in SR 1193/87/A, dated 14.12.1989. The said order was also served by affixture at the last known address of the urban land owner. The

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second respondent had issued a draft statement, under Section 10(1), on 31.3.1990, which was also served by affixture.

20. On hearing the contentions of the learned counsels appearing on behalf of the petitioner as well as the respondents and on a perusal of the records available before this Court and on analysing the decided cases cited for consideration, it is clear that the impugned proceedings have been passed without following the procedure established by law. It is not in dispute that the second respondent had sought to serve the statutory notices contemplated under the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, by affixture, contrary to Rule 8 of the Tamil Nadu Urban Land (Ceiling & Regulation) Rules, 1978.

21. It is seen that the mandatory notices have been issued in the name of one Velu from whom the petitioner is said to have purchased the land in question by way of registered sale deeds in the year 1962. Even though the name of the petitioner had been entered in the relevant revenue records, the respondents have not chosen to initiate the necessary proceedings against the petitioner. Instead, the entire proceedings, under the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, have been directed against Velu, the vendor of the land.

22. Further, the respondents have not been in a position to show that actual possession of the land in question had been taken and the due compensation paid. In fact, from the counter-affidavit filed on behalf of the respondents it is seen that all the proceedings have been taken against Velu and not against the petitioner in the present writ petition.

23. It has also been admitted by the respondents that since the last known address of the urban land owner was not available, no compensation could be paid. Therefore, in view of the earlier decisions of this Court, cited supra, the claims made by the petitioner are valid and sustainable. On the contrary, the contentions raised by the respondents cannot be accepted.

24. In such circumstances, the impugned proceedings of the second respondent, dated 14.12.1989, in ref. SR.1199/87A, is quashed and all the consequential proceedings of the respondents shall stand abated,

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in view of Section 4 of the Repeal Act, 20 of 1999. Accordingly, the writ petition is partly allowed to the extent stated above. No costs. Consequently, connected M.P.Nos.1 and 2 of 2007 are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Special Commissioner and
   Commissioner of Land Reforms,
   Chepauk, Chennai - 600 005.

2. The Competent Authority,
   Urban Land Ceiling and
   Assistant Commissioner, Urban Land Tax
   (Alandur Zone)
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3. The Tahsildhar,
   Tambaram, Chennai

+1cc to Mr.B.Natarajan, Advocate Sr 53238
+1cc to Govt. Pleader Sr 53021

TEJ (CO)
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